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BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

FILMED
FEB 13 1990

IN THE MATTER OF THE APPLICATION)	
FOR BENEFICIAL WATER USE PERMIT)	FINAL ORDER
NO. 65739-76H BY JOHN D. AND)	
VICTORIA L. GREATHOUSE)	

* * * * *

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received. Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the October 10, 1989 Proposal for Decision, and incorporates them herein by reference.

WHEREFORE, based upon the record herein, the Department makes the following:

ORDER

Subject to the terms conditions, restrictions, and limitations set forth below, Application for Beneficial Water Use Permit No. 65739-76H be granted to John D. and Victoria L. Greathouse to appropriate 212 gpm up to 60.13 acre-feet per annum from an unnamed tributary (Poll Creek) of the Bitterroot River. Water appropriated hereunder is to be diverted by ditch into a 0.5 acre-foot offstream reservoir located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of

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Section 23, Township 10 North, Range 20 West, Ravalli County, Montana, from which it will be pumped for use as follows: 210 gpm up to 60 acre-feet per annum for supplemental irrigation use on 28 acres located in the NW¼NE¼ of said Section, from May 1 to September 30, inclusive, each year, and 2 gpm up to .13 acre-feet per annum for stock use from May 1 to November 1, inclusive, each year. The priority date is May 19, 1987 at 3:45 p.m.

The Permit in this matter is issued subject to the following express terms, conditions, restrictions, and limitations:

A. This Permit is subject to all prior and existing water rights, and to any final determination of such rights as provided by Montana Law. Nothing herein shall be construed to authorize appropriations by the Permittees to the detriment of any senior appropriator.

B. Issuance of this Permit by the Department shall not reduce the Permittees' liability for damages caused by exercise of this Permit, nor does the Department, in issuing this Permit, acknowledge any liability for damages caused by exercise of this Permit, even if such damage is a necessary and unavoidable consequence of the same.

C. The Permittees shall allow such water as is not reasonably required for such uses as are hereby authorized to immediately return to the source.

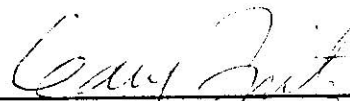
NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a peti-

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tion in the appropriate court within 30 days after service of the Final Order.

Dated this 23 day of ^{January, 1990} ~~December~~, 1989.


Gary Fritz, Administrator
Department of Natural
Resources and Conservation
Water Resources Division
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6605

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record, at their address or addresses this 23rd day of ^{January, 1990} ~~December, 1989~~, as follows:


John D. Greathouse and
Victoria L. Greathouse
260 Martin Lane
Florence, MT 59833

Robert and JoAnne Moore
NW 5200 Moores Way
Florence, MT 59833

Lawrence D. Johnson
Johnson and Johnson
Attorneys at Law
P.O. Box 306
Hamilton, MT 59840

John and Katherine Oster
NW 5530 East Side Highway
Florence, MT 59833

Mike McLane, Field Manager
Missoula Field Office
P.O. Box 5004
Missoula, MT 59806


Irene V. LaBare
Legal Secretary

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BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR BENEFICIAL WATER USE PERMIT)	PROPOSAL FOR DECISION
NO. 65739-76H BY JOHN D. AND)	
VICTORIA L. GREATHOUSE)	

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above-entitled matter on July 14, 1989, in Missoula, Montana.

Applicants John D. And Victoria L. Greathouse appeared by and through said John D. Greathouse. Applicants introduced one exhibit (four photographs), which was admitted.

Objectors Robert and Joanne Moore appeared by and through said Robert Moore.

FINDINGS OF FACT

1. The captioned Application, duly filed on May 19, 1987, at 3:45 p.m., requests 212 gpm up to 60.13 acre-feet per annum from an unnamed tributary (Poll Creek) of the Bitterroot River, diverted by ditch into a 0.5 acre-foot offstream reservoir located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, Township 10 North, Range 20 West, Ravalli County, Montana, from which it would be pumped for use as follows: 210 gpm up to 60 acre-feet per annum for supplemental irrigation use on 28 acres located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said section, from May 1 to September 30, inclusive of each year,

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and 2 gpm up to .13 acre-feet per annum for stock use from May 1 to November 1, inclusive of each year.

2. The pertinent facts of the Application were published in the Ravalli Republic, a newspaper of general circulation in the area of the source, on September 9, 1987. Timely Objections to the Application, were filed by John and Katherine Oster and Robert and Joanne Moore. Osters did not appear at the hearing.

3. Although Moores' Objection states lack of water as one reason for their objecting, the principle reason for the objection is their assertion that the construction of the diversion works would cause water to back up onto their property, thereby causing damage to their lawn and garden as well as to the foundation of their house.

4. Objectors Moore have an interest in Statement of Claim of Existing Water Right No. 2029-76H which claims 500 gpm up to 200 acre-feet per annum for irrigation of 80 acres from "Poll Creek" (also spelled "Pole Creek"), which is a local name for the unnamed tributary which is the source herein. However, the grant of this application could in no way affect the exercise of Moore's claimed right, as it is a senior right with a point of diversion located upstream from the proposed point of diversion herein.

5. Applicants have filed Statement of Claim No. 148105-76H which claims all the "waste" water flow in Poll Creek up to 84 acre-feet per annum for irrigation of the same 28 acres as

requested hereunder. The water here applied for would supplement such water as is diverted pursuant to this claim.

6. All water in Poll Creek would be diverted into the off-stream reservoir. However, that water which is not pumped from the reservoir would immediately return to the natural channel.

7. All appropriators exercising water rights on Poll Creek have points of diversion above Applicant's proposed point of diversion.

8. Although variable depending on upstream irrigation, in most years from May through October, there is a "large amount" of water in Poll Creek at Applicants' point of diversion (up to 3 cfs - see Department file: Application supplement and September 2, 1988 letter from Mike McLane to John Greathouse).

9. There are presently no reservations of Poll Creek water, nor are there any Permits to appropriate same.

10. The proposed means of diversion is a small diversion dike in the present stream channel. This will shunt water therefrom into a ditch of sufficient size to carry 3 cfs of water, and sloped so that water flowing therein will not backup any more than it would without the alterations to the streambed. The water will travel several feet, then empty into an existing 0.5 acre-foot pit to be used as a reservoir. Applicant will divert 210 gpm from the reservoir by pump. Waters entering the reservoir in excess of pumping (when it occurs) and original fill will flow through the reservoir and immediately reenter the

original stream channel. Water pumped from the ponds will travel through irrigation lines and sprinkle the place of use.

The above-described system will function to physically divert, impound, and deliver water to the proposed place of use without unnecessary losses or undue interference with normal stream channel flow above or below the diversion works.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter herein and over the parties hereto. Title 85, chapter 2, part 3, MCA.

2. The Department gave proper notice of the hearing, and all substantive procedural requirements of law or rule have been fulfilled, therefore, the matter was properly before the Hearing Examiner.

3. The Department must issue a Permit if the Applicant proves by substantial credible evidence that the following criteria, set forth in § 85-2-311, MCA (1987), are met:

- (a) there are unappropriated waters in the source of supply:
 - (i) at times when the water can be put to the use proposed by the applicant;
 - (ii) in the amount the applicant seeks to appropriate; and
 - (iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;
- (b) the water rights of a prior appropriator will not be adversely affected;
- (c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;
- (d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

. . .

4. The proposed use of water, for irrigation and stock, is a beneficial use of water. See § 85-2-102(2), MCA.

5. The criterion set forth in § 85-2-311(1)(a) has been proved met. Findings of Fact 7, 8. See In Re Application No. 60662-s76Gg by Hadley, Proposal for Decision (Final Order, May 31, 1988).

6. The Applicant has provided substantial credible evidence that the water rights of a prior appropriator will not be adversely affected. Findings of Fact 4, 7. The possibility of damage to property of Objectors Moore, other than water rights, is not a basis on which a Permit can be denied. See In Re Application No. 57448-s40R by Sheridan County et al, Proposal for Decision (Final Order, June 30, 1989).

7. The criterion set forth in § 85-2-311(1)(e) has been met. Finding of Fact 9.

8. The proposed means of diversion, construction and operation of the appropriation works are adequate. Finding of Fact 10.

PROPOSED ORDER

Subject to the terms conditions, restrictions, and limitations set forth below, Application for Beneficial Water Use Permit No. 65739-76H be granted to John D. and Victoria L. Greathouse to appropriate 212 gpm up to 60.13 acre-feet per annum

from an unnamed tributary (Poll Creek) of the Bitterroot River. Water appropriated hereunder is to be diverted by ditch into a 0.5 acre-foot offstream reservoir located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, Township 10 North, Range 20 West, Ravalli County, Montana, from which it will be pumped for use as follows: 210 gpm up to 60 acre-feet per annum for supplemental irrigation use on 28 acres located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section, from May 1 to September 30, inclusive, each year, and 2 gpm up to .13 acre-feet per annum for stock use from May 1 to November 1, inclusive, each year. The priority date is May 19, 1987 at 3:45 p.m.

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B. Issuance of this Permit by the Department shall not reduce the Permittees' liability for damages caused by exercise of this Permit, nor does the Department, in issuing this Permit, acknowledge any liability for damages caused by exercise of this Permit, even if such damage is a necessary and unavoidable consequence of the same.

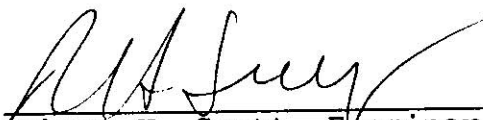
C. The Permittees shall allow such water as is not reasonably required for such uses as are hereby authorized to immediately return to the source.

NOTICE

This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. The exceptions must be filed and served upon all parties within 20 days after the proposal is mailed. Parties may file responses to any exception filed by another party within 20 days after service of the exception. However, no new evidence will be considered.

No final decision shall be made until after the expiration of the time period for filing exceptions, and due consideration of timely exceptions, responses, and briefs.

Dated this 10 day of October, 1989.


Robert H. Scott, Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620-2301

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record, certified mail, return receipt requested, at their address or addresses this 10th day of October, 1989, as follows:

John D. Greathouse and
Victoria L. Greathouse
260 Martin Lane
Florence, MT 59833

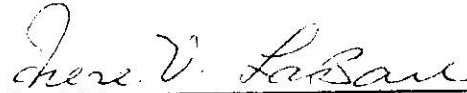
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Legal Secretary